IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5474 of 2006
Date of Decision: 3.7.2007

Piar Kaur and others ...Petitioners

Versus

Ranjit Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashish Aggarwal, Advocate, for the petitioners.

Shri Yogesh Chaudhary, Advocate, for the respondents.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 7.4.2006 passed by the learned trial Court, whereby an application for permission to lead secondary evidence to prove the sale deed dated 18.10.1958, was declined.

The plaintiffs have filed a suit for declaration that the suit land is a Joint Hindu Family Property of the plaintiffs along with the defendants and Pritpal Singh was the Karta of the aforesaid Joint Hindu Family and therefore, the plaintiffs are in joint possession of the suit land after the death of Karta. The defendants have come up with the plea that the suit land is not a Joint Hindu Family Property. Rather it is the self acquired property of Pritpal Singh and that he has executed a Will dated 19.2.2001 in favour of the defendants.

One of the issues framed in the suit is “Whether Pritpal Singh constituted Joint Hindu Family with his sons Ranjit and

Darshan Singh, if so, its effect? OPP". It is the case of the plaintiffs in evidence that Darshan Singh, father and predecessor-in-interest of Pritpal Singh owned land in the area, now part of Pakitan. In lieu of the said land, the land was allotted in village Kala Afgana, District Gurdaspur, but the heirs of Darshan Singh sold the said land on 18.10.1958 to Amar Singh and Harbans Singh and out of the sale proceeds of the said land, the land in dispute was purchased. The plaintiffs have examined Balkar Singh son of Amar Singh vendee from the legal heirs of Darshan Singh. He has deposed that his father and uncle have died and the original sale deed has been lost and inspite of searching for the same, he could not locate the same. The statement of Balkar Singh was recorded on 9.8.2004 and on the same date itself, the plaintiffs moved an application for permission to lead secondary evidence of the document dated 18.10.1958. The said application has been declined by the learned trial Court vide the order impugned in the present petition.

The learned trial Court has found that the sale deed is not a matter in issue and has not been pleaded in the plaint. It has also been found that the factum of loss of sale deed has not been disclosed by the plaintiffs and, therefore, the plaintiffs cannot be permitted to lead secondary evidence in respect of a fact, which is not matter in issue.

Having heard the learned counsel for the parties at some length, I am of the opinion that the impugned order passed by the learned trial Court, suffers from patent illegality and irregularity and, therefore, the same is liable to be set aside. The dispute between the parties is whether the land in dispute is ancestral property or not. The sale of the land at Gurdaspur and purchase of land in dispute out of the proceeds thereof has

been stated by PW1- Mohinder Kaur daughter of Pritpal Singh. Once the purchaser has appeared as a witness and deposed that he has not been able to locate the sale deed, the plaintiffs were not required to prove anything more to prove the loss of the documents. In normal circumstances, the vendee is expected to have the original sale deed and if the vendee has appeared as a witness deposing therein that the original sale deed cannot be located, the plaintiff could not lead any other evidence to prove the loss of the document. Since the issue framed is whether the property is joint Hindu Family Property in the hands of Pritpal Singh, therefore, the land said to be acquired with the Joint Hindu Family funds cannot be said to be irrelevant to the issue framed. Therefore, the impugned order passed by the learned trial Court is wholly unjust and has caused substantial injustice to the plaintiffs.

Consequently, the present petition is allowed. The impugned order dated 7.4.2006 passed by the learned trial Court, is set aside. The petitioner-plaintiffs are permitted to lead secondary evidence to prove the document dated 18.10.1958.

03-07-2007 (HEMANT GUPTA)
ds JUDGE